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**HOUSE BILL 767**

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

**INTRODUCED BY**

**Ray Begaye**

**AN ACT**

**RELATING TO UTILITIES; AMENDING A SECTION OF THE NMSA 1978 TO  
PROVIDE FOR HEARINGS ON RATE CHANGES PROPOSED BY A GENERATION  
AND TRANSMISSION COOPERATIVE BASED ON ONE PROTEST.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 62-6-4 NMSA 1978 (being Laws 1941,  
Chapter 84, Section 17, as amended) is amended to read:**

**"62-6-4. SUPERVISION AND REGULATION OF UTILITIES. --**

**A. The commission shall have general and exclusive  
power and jurisdiction to regulate and supervise every public  
utility in respect to its rates and service regulations and in  
respect to its securities, all in accordance with the  
provisions and subject to the reservations of the Public  
Utility Act, and to do all things necessary and convenient in  
the exercise of its power and jurisdiction. Nothing in this**

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1 section, however, shall be deemed to confer upon the commission  
2 power or jurisdiction to regulate or supervise the rates or  
3 service of any utility owned and operated by any municipal  
4 corporation either directly or through a municipally owned  
5 corporation or owned and operated by any H class county, by a  
6 class B county as defined in Section 4-36-8 NMSA 1978 or by a  
7 class A county as described by Section 4-36-10 NMSA 1978 either  
8 directly or through a corporation owned by or under contract  
9 with an H class county, by a class B county as defined in  
10 Section 4-36-8 NMSA 1978 or by a class A county as described by  
11 Section 4-36-10 NMSA 1978 or the rates, service, securities or  
12 class I or class II transactions of a generation and  
13 transmission cooperative. No inspection or supervision fees  
14 shall be paid by generation and transmission cooperatives, or  
15 by such municipalities or municipally owned corporations, a  
16 class B county as defined in Section 4-36-8 NMSA 1978, a class  
17 A county as described by Section 4-36-10 NMSA 1978 or H class  
18 counties or such corporation owned by or under contract with a  
19 class B county as defined in Section 4-36-8 NMSA 1978, a class  
20 A county as described by Section 4-36-10 NMSA 1978 or an H  
21 class county with respect to operations conducted in a class B  
22 county as defined in Section 4-36-8 NMSA 1978, in a class A  
23 county as described by Section 4-36-10 NMSA 1978 or in H class  
24 counties.

25 B. The sale, furnishing or delivery of gas, water

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1 or electricity by any person to a utility for resale to or for  
2 the public shall be subject to regulation by the commission but  
3 only to the extent necessary to enable the commission to  
4 determine that the cost to the utility of the gas, water or  
5 electricity at the place where the major distribution to the  
6 public begins is reasonable and that the methods of delivery of  
7 the gas, water or electricity are adequate; provided, however,  
8 that nothing in this subsection shall be construed to permit  
9 regulation by the commission with respect to a generation and  
10 transmission cooperative, except location control pursuant to  
11 Section 62-9-3 NMSA 1978 and limited rate regulation to the  
12 extent provided in Subsection D of this section, or of  
13 production or sale price at the wellhead of gas or petroleum.

14 C. The sale, furnishing or delivery of coal,  
15 uranium or other fuels by any affiliated interest to a utility  
16 for the generation of electricity for the public shall be  
17 subject to regulation by the commission but only to the extent  
18 necessary to enable the commission to determine that the cost  
19 to the utility of the coal, uranium or other fuels at the point  
20 of sale is reasonable and that the methods of delivery of the  
21 electricity are adequate; provided, however, that nothing in  
22 this subsection shall be construed to permit regulation by the  
23 commission of production or sale price at the wellhead of gas  
24 or petroleum. Nothing in this section shall be construed to  
25 permit regulation by the commission of production or sale price

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1 at the point of production of coal, uranium or other fuels.

2 D. New Mexico rates proposed by a generation and  
3 transmission cooperative shall be filed with the commission in  
4 the form of an advice notice, a copy of which shall be  
5 simultaneously served on all member utilities. Any member  
6 utility may file a protest of the proposed rates no later than  
7 twenty days after the generation and transmission cooperative  
8 files the advice notice. If [~~three~~] one or more New Mexico  
9 member utilities file protests and the commission determines  
10 there is just cause in at least [~~three~~] one of the protests for  
11 reviewing the proposed rates, the commission shall suspend the  
12 rates, conduct a hearing concerning reasonableness of the  
13 proposed rates and establish reasonable rates. [~~Each~~] A  
14 protest must contain a clear and concise statement of the  
15 specific grounds upon which the protestant believes the  
16 proposed rates are unreasonable or otherwise unlawful; a brief  
17 description of the protestant's efforts to resolve its  
18 objections directly with the generation and transmission  
19 cooperative; a clear and concise statement of the relief the  
20 protestant seeks from the commission; and a formal resolution  
21 of the board of trustees of the protesting member utility  
22 authorizing the filing of the protest. In order to determine  
23 whether just cause may exist for review, the commission shall  
24 consider whether [~~each~~] a protestant has exhausted remedies  
25 with the generation and transmission cooperative or whether the

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1 generation and transmission cooperative has unreasonably  
2 rejected the protestant's objections to the proposed rates. A  
3 member utility shall present its objections to the generation  
4 and transmission cooperative in writing and allow a reasonable  
5 period for the generation and transmission cooperative to  
6 attempt resolution of, or otherwise respond to, those  
7 objections. A period of seven days after receipt of written  
8 objections will be deemed reasonable for the generation and  
9 transmission cooperative to provide a written response to the  
10 member utility, but a written response is not required if such  
11 time period extends beyond twenty days after the date on which  
12 the generation and transmission cooperative filed the advice  
13 notice. The generation and transmission cooperative and its  
14 members are expected to make a good faith effort to resolve the  
15 member utility's objections to the proposed rates during that  
16 period of time.

17 E. As used in this section, "generation and  
18 transmission cooperative" means a person with generation or  
19 transmission facilities either organized as a rural electric  
20 cooperative pursuant to Laws 1937, Chapter 100 or the Rural  
21 Electric Cooperative Act or organized in another state and  
22 providing sales of electric power to member cooperatives in  
23 this state. "